

SECTION 3-8.3-APPENDIX-SUBPART 3-8

UNABSORBED NET OPERATING LOSS (UNOL) EXAMPLES

The following examples illustrate the application of the rules and limitations as set forth in section 208(9)(f) and section 1453(k-1) and Subpart 3-8 of this Part, as such provisions were in effect on December 31, 2014, as well as the application of the rules and limitations in section 3-8.2 of this Subpart, in computing the eligible Federal and New York State (NYS) NOL carryover amounts and the amount of the UNOL for a corporation or combined group. Numbers in the examples have been rounded. To the extent the examples reference an “as if” Federal NOL, it either means that the corporation was included in a Federal consolidated return and, in order to compute its UNOL, computes its income and loss amounts “as if” it filed separately for Federal purposes or the composition of the Federal consolidated return and the New York combined group are different and in order to compute the UNOL of the combined group, the group computes its income and loss amounts “as if” the New York combined group was the Federal consolidated group.

Example 1:

ABC Company, a calendar-year taxpayer, began business in 2009 and became taxable in NYS in 2011. ABC Company's base year is calendar year 2014. ABC Company had Federal/NYS income and losses, and applied its NOLs for tax years beginning before 1/1/2015, as follows:

	2009	2010	2011	2012	2013	2014	Eligible NOL carryover amount 12/31/2014
ABC Company							
"As if" Federal							
Federal Taxable Income	(1,500)	(800)	(500)	(400)	300	600	
NOL Carried Forward from 2009 to 2013	300				(300)		
NOL Carried Forward from 2009 to 2014	600					(600)	
Balance	(600)	(800)	(500)	(400)	-	-	(900)
NY							
Entire Net income	-	-	(600)	(500)	250	400	
Balance	-	-	(600)	(500)	250	400	(1,100)

Computation of ABC Company's eligible NOL carryover amounts and UNOL.

A Federal NOL sustained in a tax year that ABC Company was not subject to tax in New York State (i.e. the NOLs incurred in 2009 and 2010) cannot be included in ABC Company's eligible Federal NOL carryover amount. Therefore, ABC Company's eligible Federal NOL carryover amount is (\$900). ABC Company's eligible NYS NOL carryover amount is (\$1,100). ABC Company's UNOL is (\$900), which is the lesser of its eligible Federal NOL carryover amount and its eligible NYS NOL carryover amount.

Example 2:

XYZ Company, a calendar-year NYS taxpayer, began business in 2009 and became taxable in NYS in 2009. XYZ Company's base year is calendar year 2014. XYZ Company had Federal/NYS income and losses, and applied its NOLs for tax years beginning before 1/1/2015, as follows:

XYZ Company	2009	2010	2011	2012	2013	2014	Eligible NOL carryover amount 12/31/2014
"As if" Federal							
Federal Taxable Income	(1,000)	(1,200)	600	(400)	300	(700)	
NOL Carried Forward from 2009 to 2011	600		▶ (600)				
NOL Carried Forward from 2009 to 2013	300				▶ (300)		
Balance	(100)	(1,200)	-	(400)	-	(700)	(2,300)
NY							
Entire Net income	200	(1,000)	(300)	(100)	400	(500)	
Balance	200	(1,000)	(300)	(100)	400	(500)	(1,600)

Computation of XYZ Company's eligible NOL carryover amounts and UNOL.

XYZ Company's Federal and NYS NOLs available for carryover are only included in the eligible Federal and NYS NOL carryover amount, respectively, when there is both a Federal and New York State NOL sustained in the same taxable year and available for carryover as of the last day of the corporation's base year. Thus, only the Federal NOLs sustained in 2010, 2012, and 2014 and available for carryover as of the last day of its base year are included in the eligible Federal NOL carryover amount. The Federal NOL sustained in 2009 is not included in the eligible Federal NOL carryover amount as there was no corresponding NYS NOL sustained in that year and available for carryover. The NYS NOL sustained in 2011 is not included in the eligible NYS NOL carryover amount as there was no corresponding Federal NOL sustained in that year and available for carryover. ABC Company's UNOL is (\$1,600), which is the lesser of its eligible Federal NOL carryover amount and its eligible NYS NOL carryover amount.

Example 3:

Corporations L, M, N, and O are calendar-year taxpayers that began doing business in 2011 and properly filed as members of a combined group in NYS for 2011 through 2014. The combined group's base year is calendar year 2014. The combined group had Federal/NYS losses for tax years beginning before 1/1/2015, as follows:

Federal	2011 FTI	2012 FTI	2013 FTI	2014 FTI	Federal "as if" group's eligible NOL carryover amount 12/31/2014
L	(400)	100	(200)	(920)	
M	980	(3,000)	(500)	(2,300)	
N	(600)	1,900	(1,400)	140	
O	(900)	(1,100)	700	(1,500)	
Totals	(920)	(2,100)	(1,400)	(4,580)	(9,000)

NYS Combined Group	2011 ENI	2012 ENI	2013 ENI	2014 ENI	Combined group's eligible NYS NOL carryover amount 12/31/2014
L	(500)	500	(300)	(750)	
M	850	(2,000)	(600)	(2,000)	
N	(600)	2,000	(1,500)	250	
O	(1,000)	(1,000)	500	(1,000)	
Totals	(1,250)	(500)	(1,900)	(3,500)	(7,150)

Computation of base year combined group's eligible NOL carryover amounts and UNOL and Corporation L's, M's, N's and O's UNOL.

The base year combined group's Federal and NYS NOLs sustained in 2011 through 2014 and available for carryover as of the last day of its base year are included in its eligible Federal and NYS NOL carryover amount, respectively, since there were both Federal and NYS NOLs sustained in each of these taxable years and available for carryover as of the last day of its base year. The resulting base year combined group's eligible Federal NOL carryover amount is (\$9,000) and its eligible NYS NOL carryover amount is (\$7,150). The base year combined group's UNOL is (\$7,150), which is the lesser of its eligible Federal NOL carryover amount and its eligible NYS NOL carryover amount. Each member of the base year combined group must then compute its own UNOL, by multiplying the base year combined group's UNOL amount of (\$7,150) by a percentage that represents each member's contribution of losses to the combined group's UNOL and as illustrated below:

NYS Combined Group	2011 ENI	2012 ENI	2013 ENI	2014 ENI	Losses by Member	Member's losses as a % of total losses of all members with losses	Member's UNOL
L	(500)	500	(300)	(750)	(1,550)	13.77%	(984)
M	850	(2,000)	(600)	(2,000)	(4,600)	40.89%	(2,924)
N	(600)	2,000	(1,500)	250	(2,100)	18.67%	(1,335)
O	(1,000)	(1,000)	500	(1,000)	(3,000)	26.67%	(1,907)
Totals	(1,250)	(500)	(1,900)	(3,500)	(11,250)	100.00%	(7,150)

Example 4 (page i of ii):

Corporations E and F are calendar-year taxpayers that began doing business in 2011 and properly filed as members of a combined group in NYS for 2011 through 2014. The combined group's base year is calendar year 2014. The combined group had Federal/NYS income and losses, and applied its NOLs for tax years beginning before 1/1/2015, as follows:

	2011	2012	2013	2014	Eligible NOL carryover amount 12/31/2014
Combined Group:					
"As if" Federal					
Federal Taxable Income					
Combined Group:					
Corporation E	(10,000)	(7,000)	2,000	3,000	
Corporation F	(6,000)	650	150	1,000	
Total for Federal "as if" group	(16,000)	(6,350)	2,150	4,000	
NOL Carried Forward from 2011 to 2013	2,150		(2,150)		
NOL Carried Forward from 2011 to 2014	4,000			(4,000)	
Balance	(9,850)	(6,350)	-	-	(16,200)
NY					
Entire Net Income					
Combined Group:					
Corporation E	(11,000)	(7,700)	2,500	4,000	
Corporation F	(4,000)	100	(200)	800	
Total for combined group	(15,000)	(7,600)	2,300	4,800	
NOL Carried Forward from 2011 to 2013	2,150		(2,150)		
NOL Carried Forward from 2011 to 2014	4,000			(4,000)	
Balance	(8,850)	(7,600)	150	800	(16,450)

Computation of the base year combined group's eligible NOL carryover amounts and UNOL and Corporation E's and F's UNOL. The NYS NOLs carried forward from 2011 and deductible in 2013 and 2014 are limited to the amount of the "as if" Federal NOLs carried forward from 2011 to those years. In addition, the Federal deduction limitation also would limit the group's NYS NOL deduction in 2013 and 2014 to \$2,150 and \$4,000 respectively. The base year combined group's Federal and NYS NOLs sustained in 2011 and 2012 and available for carryover as of the last day of its base year are included in its eligible Federal and NYS NOL carryover amount, respectively, since there were both Federal and NY State NOLs sustained in each of these taxable years and available for carryover as of the last day of the combined group's base year. The base year combined group's UNOL is (\$16,200), which is the lesser of its eligible Federal NOL carryover amount and its eligible NYS NOL carryover amount. Each member of the base year combined group must then compute its own UNOL, by multiplying the base year combined group's UNOL amount of (\$16,200) by a percentage that represents each member's contribution of losses to the combined group's UNOL and as illustrated below. Since 2013 is a net income year for the combined group, Corporation F's loss of (\$200) in 2013 is not included in the losses by member amounts below.

Example 4 (page ii of ii):

Member	2011 NYS NOL after carry forward (see note)	2012 NYS NOL	2013 NYS NOL	2014 NYS NOL	Losses by Member	Member's losses as a % of total losses of all members with losses	Member's UNOL
E	(6,490)	(7,600)	-	-	(14,090)	86%	(13,932)
F	(2,360)	-	-	-	(2,360)	14%	(2,268)
Totals	(8,850)	(7,600)	-	-	(16,450)	100%	(16,200)

NOTE: Since some of the 2011 combined NOL was deductible in 2013 and 2014, the remaining available NOL from 2011 (\$8,850) is allocated to Corporations E and F based on each corporation's original loss in 2011 divided by the total combined loss for 2011 (\$15,000) as follows:

Corporation E: $8,850 * (11,000/15,000) = 6,490$

Corporation F: $8,850 * (4,000/15,000) = 2,360$

Example 5 (page i of iii):

During calendar tax year 2011, Corporation T filed separately in NYS and was not part of an affiliated group. In 2012, Corporation T began filing combined in NYS as a member of Group P, which consisted of Corporations Q and R, in addition to Corporation T. Group P had no Federal or NYS NOLs prior to 2012; Corporation T had no Federal or NYS NOLs prior to 2011. Group P's base year is calendar year 2014. Corporation T had an NOL for both Federal and NYS purposes in 2011, which is a Separate Return Limitation Year ("SRLY"); the SRLY NOL was not subject to IRC section 382 limitations. Corporation T and Combined Group P had Federal/NYS income and losses, and applied the NOLs for tax years beginning before 1/1/2015, as follows:

Corporation T	2011
Federal	
Federal Taxable Income	(250)
SRLY NOL Carried Forward from 2011 to 2012 (to Group P)	100
Balance	(150)
NY	
Entire Net Income	(300)
NOL Carried Forward from 2011 to 2012 (to Group P)	100
Balance	(200)

	T's SRLY NOL available after carryforward 2011	2012	2013	2014	Group P's Eligible NOL carryover amounts 12/31/2014
Group P					
"As if" Federal					
Federal Taxable Income					
Group P:					
Corporation Q		50	(150)	100	
Corporation R		50	50	150	
Prior Combined Group Q and R gain/loss		100	(100)	250	
Corporation T		100	(200)	(250)	
Total for Federal "as if" group		200	(300)	-	
SRLY NOL Carried Forward from 2011 (from Corp T) to 2012		(100)			
Balance	(150)	100	(300)	-	(450)

Example 5 (page ii of iii):

NY	T's SRLY NOL available after carryforward 2011	2012	2013	2014	Group P's Eligible NOL carryover amounts 12/31/2014
Entire Net Income					
Group P:					
Corporation Q		(200)	(100)	50	
Corporation R		50	50	50	
Prior Combined Group Q and R gain/loss		(150)	(50)	100	
Corporation T		300	(150)	(150)	
Total for Combined Group P		150	(200)	(50)	
NOL Carried Forward from 2011 (from Corp T) to 2012		(100)			
Balance	(150)	50	(200)	-	(350)

Computation of base year Group P's eligible NOL carryover amounts and UNOL and Corporation Q's, R's, and T's UNOL. The amount of Corporation T's SRLY NOL from 2011 that can be carried forward to Group P is (\$250), which is the lesser of the Federal or State NOL available and is the limitation for a loss sustained in an individual tax period being carried to a combined period. The deduction by Group P in 2012 is limited to \$100, the amount of Corporation T's FTI for 2012. The NOLs remaining in 2011 and 2013 are included in Group P's eligible NYS carryover amount since there were both Federal and State NOL's sustained in each of those taxable years and available for carryover as of the last day of Group P's base year. Group P's NYS NOL sustained in 2014 (\$50) is not included in the eligible carryover amount as there was no corresponding Federal NOL by Group P in that taxable year and available for carryover. Group P's UNOL is (\$350) and includes the remaining loss available from the 2011 taxable period of (\$150) along with (\$200) from the 2013 tax period, being the lesser of the Federal or State NOL available. Each member of the base year combined Group P must then compute its own UNOL. Corporation T will have the (\$150) remaining from the 2011 taxable year and its portion of the combined loss from the 2013 taxable year as determined by multiplying Group P's combined loss of (\$200) by a percentage that represents each member's contribution of losses to the combined group's loss. Corporation Q will have its portion of the combined loss from the 2013 taxable year once again determined by multiplying Group P's combined loss of (\$200) by a percentage that represents each member's contribution of losses to the combined group's loss and as illustrated below.

Example 5 (page iii of iii):

Member	2011 NYS NOL after carryforward	2012 NYS NOL	2013 NYS NOL	2014 NYS NOL	Losses by Member	Member's % of total combined losses of all members	Member's Share of Combined 2013 Loss	Member's Total UNOL
Q		-	(100)	-	(100)	40%	(80)	(80)
R		-	50	-	-	0%	0	0
T	(150)	-	(150)	-	(150)	60%	(120)	(270)
Totals	(150)	0	(200)	0	(250)	100%	(200)	(350)

Corporation T's NYS loss of \$150 in 2014 is not included in the losses by member amounts above. This is because the NYS NOL sustained in that year by the combined group that included Corporation T (i.e. Group P's 2014 combined ENI of (\$50)) was not included in the determination of Group P's UNOL (since, as explained above, there was no corresponding Federal NOL sustained by Group P in that taxable year and available for carryover).

Example 6 (page i of ii):

Acme Company, a calendar-year taxpayer, began business in 2009 and became taxable in NYS in 2009. Acme Company's base year is calendar year 2014. Acme Company had a change in ownership effective January 1, 2013, subjecting its Federal losses sustained in 2009 through 2012 to IRC section 382 limitations. The ACME company's annual section 382 limitation amount is \$2,500. After the change in ownership Acme Company continued to file on a separate basis for NYS purposes. Acme Company had Federal/NYS losses for tax years beginning before 1/1/2015, as follows:

Acme Company	Federal NOLs subject to IRC section 382				Federal NOLs not subject to IRC section 382		Eligible NOL carryover amounts 12/31/2014	
	2009	2010	2011	2012	2013	2014	Arising from NOLs subject to IRC 382 (2009-2012)	Arising from NOLs not subject to IRC 382 (2013-2014)
"As if" Federal								
Federal Taxable Income	(15,000)	(10,000)	(12,000)	(20,000)	(8,000)	(5,000)		
Balance	(15,000)	(10,000)	(12,000)	(20,000)	(8,000)	(5,000)	(50,000)	(13,000)
NY								
Entire Net Income	(20,000)	(12,000)	(10,000)	(18,000)	(5,000)	(4,000)		
Balance	(20,000)	(12,000)	(10,000)	(18,000)	(5,000)	(4,000)	(60,000)	(9,000)

Computation of Acme Company's eligible NOL carryover amounts and UNOL. Since Acme Company has both Federal NOLs available for carryover that are subject to IRC section 382 limitations (from 2009 through 2012) and Federal NOLs available for carryover that are not subject to IRC section 382 limitations (from 2013 and 2014), Acme Company must separately compute its eligible Federal NOL carryover amount for each, and also must separately compute its corresponding eligible NYS NOL carryover amount for each. Acme Company's Federal NOLs available for carryover from 2009 through 2012 total (\$57,000). However, due to the IRC section 382 limitation, the maximum amount of such NOLs available for carryover that can be included in its eligible Federal NOL carryover amount arising from Federal NOLs subject to IRC section 382 limitations is limited to (\$50,000) which is the annual section 382 limitation amount of (\$2,500) multiplied by 20, less the amount of any such NOLs actually deducted (zero in this example as 2013 and 2014 are loss years). Acme Company's Federal NOLs available for carryover from 2013 and 2014, totaling (\$13,000), are not subject to section 382 limitations and are included in its eligible Federal NOL carryover amount arising from Federal NOLs not subject to IRC section 382 limitations. Acme Company's UNOL is (\$59,000), which is the sum of the following amounts: (i) the lesser of the eligible Federal or NYS NOL carryover amounts arising from Federal NOLs subject to IRC section 382 limitations; and (ii) the lesser of the eligible Federal or NYS NOL carryover amounts arising from Federal NOLs not subject to IRC section 382 limitations.

	Arising from NOLs subject to IRC section 382 2009-2012	Arising from NOLs not subject to IRC section 382 2013-2014

Example 6 (page ii of ii):

Eligible Federal NOL carryover amounts (A)	(50,000)	(13,000)
Eligible NYS NOL carryover amounts (B)	(60,000)	(9,000)
Lesser of (A) and (B)	(50,000)	(9,000)
UNOL	(\$59,000)	